

REMARKS

Applicant replies to the Office Action dated March 4, 2008 within three months. Claims 1-22 and 25 stand rejected. Claims 23, 24 and 26 were previously withdrawn. Applicant amends claims 1, 6, 11-14, 17 and 22, and cancels claim 25 without prejudice to filing one or more claims with similar subject matter in other applications. Support for the amendments may be found in the originally-filed specification, claims, and figures. No new matter has been added by virtue of these amendments. In view of the amendments and following remarks, Applicant respectfully requests reconsideration and allowance of all pending claims 1-22 (4 independent claims; 22 total claims).

A. 35 U.S.C. § 112, second paragraph

The Examiner rejects claims 17-21 under 35 U.S.C. 112, second paragraph because the element “said head component having cutting threads” lacks antecedent basis. The Examiner also rejects claims 18-21 as depending from improper claim 17. Applicant amends claim 17 to recite “providing a head component having cutting threads,” thus providing antecedent basis and obviating any basis for rejection under Section 112. Accordingly, Applicant respectfully requests withdrawal of the Section 112, second paragraph rejection of claims 17-21.

B. 35 U.S.C. § 101

The Examiner rejects claims 11-13 and 22 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. More specifically, the Examiner contends claims 11-13 and 22 include a human within their scope. Applicant traverses this rejection, but to expedite prosecution, Applicant amends these claims to remove the non-statutory subject matter as elements of the claims, thus obviating any basis for rejection under Section 101. Accordingly, Applicant respectfully requests withdrawal of the Section 101 rejection of claims 11-13 and 22.

C. Rejection of Claims 1-22 under 35 U.S.C. §§ 102(a) and 103

The Examiner contends claims 1-22 are unpatentable over various cited references under 35 U.S.C. §§ 102(a) and 103. For the reasons provided below, Applicant respectfully submits that none of the cited references disclose or contemplate all of the elements of pending claims 1-22.

1. Claims 1-10 and 14-16

a. Hehl

The Examiner rejects claims 1-8 and 14-16 under 35 U.S.C. § 102(a) as being anticipated by Hehl (WO 00/67652). Applicant respectfully traverses, but to expedite prosecution, Applicant amends claims 1 and 14 to further differentiate from the cited references.

Hehl discloses sliding bushing 15 having threads 20 on its outer periphery which may be screwed into a bone portion (see Abstract). The inner surface of the sliding bushing disclosed in Hehl is smooth (see e.g., Figure 4). Hehl further discloses sliding bushing 15 may comprise a stop device 13 (illustrated in Figures 4, 6, 9, and the Abstract). In such embodiments, stop device 13 prevents rearward translation of bolt 9 within sliding bushing 15 (i.e., stop device 13 prevents bolt 9 from displacing axially in more than one direction) (See Abstract).

Hehl does *not* disclose or contemplate at least “a head component having cutting threads, said cutting threads operable for insertion into and termination within one of said objects,” as recited in independent claim 1. Nor does Hehl disclose or contemplate at least “said cap having a second interface component including a plurality of sawteeth on an inner surface of said cap such that said cap is configured to translate along said wire with certain of said plurality of sawteeth of said cap sliding over certain of said sawteeth of said wire,” as recited in independent claim 14.

Additionally, as previously discussed in Applicant’s reply to Office Action dated December 28, 2007, Hehl teaches a bolt (See Abstract). A bolt is defined as a metal rod, pin, or bar. See “bolt.” *The American Heritage Dictionary of the English Language Fourth Edition*. Houghton Mifflin Company, 2004. 21 Dec. 2007. < <http://dictionary.reference.com/browse/bolt>>. By contrast, a wire is defined as flexible or pliable. *The American Heritage Dictionary of the English Language Fourth Edition*. Houghton Mifflin Company, 2004. 21 Dec. 2007. < <http://dictionary.reference.com/browse/wire>>. A bolt is not the functional equivalent of a wire. In fact, bolts are frequently selected by those skilled in the art for their durability and lack of flexibility. Further, Hehl fails to inherently teach flexibility of the bolt merely because a bolt can be bent. “Inherent anticipation requires that the missing

descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art. *In re Robertson*, 169 F.3d 743, 745 49 U.S.P.Q.2d (BNA) 1949. 1950-51 (Fed. Cir. 1999) (citing *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d (BNA) 1746, 1749 (Fed. Cir. 1991)). As such, Hehl does *not* disclose or contemplate at least “a flexible wire,” as recited in independent claim 1, nor a “flexible wire ... wherein said flexible wire is at least one of bendable without the use of tools and is able to be cut with a wire cutter” as recited in independent claim 14.

For all the reasons provided above, Applicant respectfully submits that the Examiner has not made a *prima facie* case of anticipation of independent claims 1 and 14, and claims 2-10 and 15-16 depending therefrom. Accordingly, Applicant respectfully requests withdrawal of the Section 102 rejection of claims 1-10 and 14-16.

b. Dakin in view of Cachia and Fletcher

The Examiner additionally rejects claims 1-10 and 14-16 under 35 U.S.C. § 103 as obvious over Dakin et al (U.S. Patent No. 6,368,326) in view of Cachia (U.S. Patent No. 5,893,850) and Fletcher (U.S. 6,050,998). The Examiner contends Dakin discloses the invention as claimed except for particularly disclosing the cap as comprising an inverse sawtooth configuration on an inner surface for translating along the flexible wire, which is known in the art from Cachia. Applicant respectfully traverses.

There is no suggestion or motivation for one of ordinary skill in the art to combine Dakin with Cachia. Dakin discloses a device comprising a flexible cord for drawing bone fragments together (Col. 4: 59-65). The flexibility of the cord in Dakin is required to achieve the functionality of the device. Dakin discloses “the cord being *pinched between the nose 28.2 and the interior of the fastener 24 to lock the cord in place.*” (emphasis added, Col. 7:26-27, Figure 1). As such, the cord in Cachia must be flexible so as to permit the cord to be secured in place by the fastener 24 and nose 28.2.

Cachia discloses a bone fixation device 24 comprising an elongate pin 26. The pin can be manufactured with medical grade construction materials, namely polymers such as high density polyethylene, nylon and polypropylene. (Col. 6: lns 16-25). Cachia further discloses the pin “must be of sufficient structural integrity for the intended application.” (Col. 5: lns 34-40). Thus, the rigid pin disclosed in Cachia could not be locked in place by pinching with a locking screw, and would not be a suitable substitute

for the cord disclosed in Dakin. Cachia further discloses the pin comprises retention structures 44 to resist proximal motion of proximal anchor 36 with respect to the pin body 32. (Col. 4: lns 50-55).

Cachia does not disclose, teach or suggest a method of enabling a flexible cord (according to Dakin) to comprise “retention structures,” (i.e., a sawtooth configuration), nor would such a modification be obvious to try by one skilled in the art. Such a combination would be based upon impermissible hindsight reasoning.

Accordingly, neither Dakin nor Cachia disclose or contemplate at least a “*flexible* wire ... having first interface ... wherein said first interface includes a sawtooth configuration,” (emphasis added) as recited in amended claim 1.

As such, Applicant respectfully submits that the prima facie case of obviousness over Dakin in view of Cachia of independent claims 1 and 14, and claims 2-10 and 15-16 depending therefrom, has not been made. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of claims 1-4 and 14-16.

2. Claims 11-13, 17-22

The Examiner argues that claims 11-13, 17-19 and 21-22 are unpatentable over various references, namely Audren (FR 2 784 019 A3), Bevan et al. (U.S. Patent 5,725,582), Muckter (U.S. Patent Pub. No. 2002/0198527), Branch (U.S. Patent No. 5,520,691), and Dakin et al (U.S. Patent No. 6,368,326) in view of Cachia (U.S. Patent No. 5,893,850) and Fletcher (U.S. 6,050,998). Applicant respectfully traverses, but to expedite prosecution, Applicant amends claims 11 and 17 to further differentiate from the cited references.

Applicant amends independent claim 11 to recite “a cap comprising a planar disk having a central hole and a plurality of surrounding holes, each surrounding hole connected to the central hole via a cut....,” and claim 17 to recite “translating a cap comprising a planar disk having a central hole and a plurality of surrounding holes, each surrounding hole connected to the central hole via a cut....,” None of the cited references disclose or contemplate at least this element. Claims 12-13, 18-22 depend from independent claims 11 and 17, contain all the elements thereof, and are allowable over the cited reference for at least the same reason as claims 11 and 17, in addition to their own features.

Accordingly, Applicant respectfully requests allowance of at least claims 11-13 and 17-22.

CONCLUSION

In view of the above amendments and remarks, Applicant respectfully submits that the currently pending claims 1-22 (4 independent claims; 22 total claims) properly set forth that which Applicant regard as their invention and are allowable over the cited prior art.

Accordingly, Applicant respectfully request reconsideration and allowance of all pending claims. The Examiner is invited to telephone the undersigned at (602) 382-6228 at the Examiner's convenience, if doing so would help further prosecution of the subject application. Applicant authorize and respectfully request that any fees due under 37 C.F.R. §§ 1.16 or 1.17 be charged to Deposit Account No. 19-2814. **This statement does NOT authorize charge of the issue fee.**

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Respectfully submitted,

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